

JUDICIAL PRACTICES AND PROCEDURES

BANKRUPTCY JUDGE THOMAS M. TWARDOWSKI

Judge Twardowski was born on February 4, 1941. He received a B.A. from the University of Notre Dame in 1962 and a J.D. from Villanova University School of Law in 1965. Judge Twardowski was appointed to the United States Bankruptcy Court for the Eastern District of Pennsylvania on April 28, 1975. Since his appointment, Judge Twardowski has presided in the Reading Division of the Court.

PRELIMINARY GENERAL MATTERS

1. *Correspondence With the Court*

Judge Twardowski discourages correspondence from counsel to the Court and will not consider correspondence that addresses any issue which should properly be raised in a pleading. Judge Twardowski's Courtroom Deputy is responsible for scheduling all hearings and trials. Consequently, all correspondence which relates to Judge Twardowski's calendar must be directed to his Courtroom Deputy.

2. *Communications With Law Clerks*

Judge Twardowski prohibits *ex parte* communication with his law clerk and does not permit his law clerk to give legal advice or discuss legal issues. Any questions concerning the status of a matter under advisement should be directed to the Clerk's Office or should be placed in writing to the Judge, with a copy of the correspondence sent to all opposing parties. Any questions concerning the general status of a case or the status of an uncontested matter should be directed to the Clerk's Office.

3. *Telephone Conferences/Use of Facsimile Machines*

Judge Twardowski welcomes the use of telephone conferences, particularly when they relate to pre-trial matters. The Judge's Judicial Assistant handles the scheduling of all telephone conferences and therefore, all inquiries regarding the scheduling of telephone conferences should be directed to Judge Twardowski's Judicial Assistant.

Judge Twardowski occasionally accepts facsimile pleadings in emergency situations, such as a consent order prepared by out-of-town counsel which requires signature that day, if counsel first calls Chambers to get permission to send the facsimile pleading. Judge Twardowski does not accept unsolicited facsimile correspondence from counsel regarding cases pending before him.

4. *Pro Hac Vice Admissions*

Judge Twardowski prefers that written requests for admission *pro hac vice* be submitted in accordance with Local Bankr. R. 2090-1(c). However, as a matter of professional courtesy in keeping with a "national practice," Judge Twardowski liberally grants oral motions made in open court at the time of the hearing or trial.

5. *Chambers Copies of Filed Papers*

Judge Twardowski absolutely discourages counsel from submitting chambers copies of pleadings. However, Judge Twardowski requires that memoranda of law be filed in duplicate with the Clerk's Office. The Clerk's Office will retain the original memorandum for the official court file and forward the copy of the memorandum to Chambers.

LITIGATION GENERALLY

1. *Continuances and Extensions*

a. *General Policy*

If *all* parties consent, the first request for a continuance will usually be granted unless the matter has been specially listed. The first request for a continuance should be made by letter or telephone to the Courtroom Deputy.

b. *Need for Filing Formal Stipulation or Motion*

All subsequent requests for continuances and any contested first request for a continuance must be made in writing to the Courtroom Deputy. In true emergencies, Judge Twardowski will accept subsequent requests for continuances and contested first requests for continuances when made by telephone to his Courtroom Deputy. After receiving a subsequent request for a continuance or a contested first request for a continuance, the Courtroom Deputy will forward the request to Chambers. Ordinarily, Judge Twardowski will then have his Judicial Assistant schedule a telephone conference. Judge Twardowski will decide on a case-by-case basis whether cause exists to grant a subsequent request for a continuance or a contested first request for a continuance.

c. *Need for Court Appearance*

A court appearance will be necessary when a continuance cannot be arranged through communication with Judge Twardowski's Courtroom Deputy.

2. *Proposed Findings of Fact and Conclusions of Law*

Judge Twardowski applies the same policy in contested matters and adversary proceedings and will generally request that the parties file proposed findings of fact and conclusions of law or memoranda of law in duplicate following the conclusion of a hearing or trial. However, if Judge Twardowski does not order the parties to file these submissions, the parties are not obligated to file them.

3. *Reading of Material Into the Record*

Judge Twardowski generally will not permit the parties to read material into the record. Instead, Judge Twardowski will direct counsel to stipulate to the submission.

4. *Settlements*

a. *Philosophy*

Judge Twardowski actively encourages settlement discussions and will participate in telephone settlement conferences if the parties so request. Any such request should be directed to Judge Twardowski's Judicial Assistant by letter or telephone. Occasionally, when the nature of the case requires, Judge Twardowski will conduct in chambers settlement conferences. Requests for in chambers settlement conferences should also be directed to Judge Twardowski's Judicial Assistant by letter or telephone.

b. *Referral of Settlement Negotiations to Another Bankruptcy Judge*

If a settlement conference is held in a case assigned to Judge Twardowski, Judge Twardowski ordinarily is the judge who will preside over the conference. However, if the nature of the case so requires, Judge Twardowski will entertain written requests to substitute another judge as the judge who will preside over the settlement conference.

c. *Need for Court Appearance*

To the extent court approval of any settlement is sought, the provisions of Fed. R. Bankr. P. 9019 must be followed if applicable. If an objection is filed to a settlement motion, a court appearance will be necessary.

UNCONTESTED MATTERS

When a motion or application is uncontested because no responsive pleading was filed by the deadline set forth in the Notice of Motion, counsel for the moving party shall file a

certificate of no response and notify Judge Twardowski's Courtroom Deputy by telephone that the matter is uncontested and request that she remove it from Judge Twardowski's hearing list.

CONTESTED MATTER PRACTICE AND PROCEDURE

1. Filing Memoranda of Law/Briefs

a. Before Hearing

Judge Twardowski ordinarily does not require that memoranda of law be filed prior to a hearing. If a party chooses to file a pre-hearing memorandum, he must file it in duplicate with the Clerk's Office. The Clerk's Office will retain the original for the official court file and forward the copy to Chambers.

b. After Hearing

Counsel are ordinarily directed by bench order to file memoranda of law following a hearing. All memoranda must be filed in duplicate with the Clerk's Office. The Clerk's Office will retain the original for the official court file and forward the copy to Chambers.

c. Reply and Surreply Memoranda/Briefs

Judge Twardowski rarely orders the parties to file reply and surreply memoranda of law. If a party desires to file a reply memorandum, he must first submit a written request to Judge Twardowski. Judge Twardowski will not consider any unsolicited reply memorandum filed without prior permission from the Court. If, however, Judge Twardowski permits a party to file a reply memorandum, he will permit the opposing party to file a surreply memorandum.

2. Scheduling of Expedited Hearings

Local Bankr. R. 9014-2 governs requests for expedited hearings. Upon the filing of a motion for expedited hearing with the Clerk's Office, Judge Twardowski's Courtroom Deputy will consult with the Judge to determine the appropriate course of action, including the scheduling of a hearing or telephone conference.

3. Rule 52(c) Motions

These motions are permitted under Fed. R. Bankr. P. 7052 and 9014.

4. *Examination of Witnesses or Argument by More Than One Attorney*

Judge Twardowski has occasionally approved the examination of a witness by more than one attorney representing a party and remains open to such requests in appropriate circumstances.

5. *Examination of Witnesses Beyond Redirect and Recross*

Judge Twardowski does not permit the examination of a witness beyond redirect and recross. To quote Judge Twardowski, "Recross concludes the testimony. The witness is excused."

6. *Presentation of Evidence*

a. *Use of Rule 43(e) Affidavits*

Judge Twardowski permits the use of Rule 43(e) affidavits in lieu of testimony if the parties consent to their use. In addition, Judge Twardowski will permit an expert appraiser's written report to be substituted for direct examination of the appraiser if the report has been served upon opposing parties prior to the hearing and if the appraiser is available for cross examination and redirect examination.

b. *Marking of Exhibits and Number of Copies*

Exhibits should always be premarked in order to save valuable time once the hearing or trial commences. Prior to the hearing or trial, counsel should exchange copies of exhibits. The original exhibit should be given to the witness during his testimony and counsel should come to court with sufficient copies of each exhibit to provide the court and all parties with a copy of each exhibit as it is being used.

c. *Offering Exhibits in Evidence*

Exhibits should ordinarily be offered in evidence at the conclusion of the party's case in chief, unless otherwise justified by the circumstances of the case.

d. *Need for Presentation of Evidence if Uncontested*

The moving party always bears the risk of carrying their burden, even in uncontested matters. Judge Twardowski does not presume to advise counsel regarding presentation of their case.

ADVERSARY PROCEEDINGS*1. Discovery Matters**a. Length of Discovery Period and Extensions*

After the answer to the complaint is filed, a pretrial order will be entered establishing a discovery deadline. (A copy of Judge Twardowski's form pre-trial order is attached). If all parties consent to an extension, a stipulation extending the discovery deadline should be filed accompanied by a proposed order approving the stipulation. In these situations, the discovery deadline will usually be extended pursuant to the initial request. If a party requests an extension to which objection is raised, a motion to extend the discovery deadline must be filed, however, Judge Twardowski will usually decide the matter without a court appearance.

b. Discovery Conferences and Dispute Resolution

Discovery disputes must be resolved by motion practice. Where neither party desires to present evidence, the parties can contact Judge Twardowski's Courtroom Deputy and arrange to file a scheduling order to submit the matter on stipulation of facts and memoranda of law. Where the parties believe that a telephone conference may resolve the dispute, a telephone conference can be arranged through Judge Twardowski's Judicial Assistant after the appropriate motion is filed.

c. Confidentiality Agreements

Confidentiality agreements will be considered by Judge Twardowski pursuant to 11 U.S.C. § 107 and federal common law.

d. Expert Witnesses

The pretrial order entered by Judge Twardowski requires that expert witnesses be identified in the pretrial statement. The pre-trial statement must also include a brief summary of the testimony the expert is expected to present at trial. (A copy of Judge Twardowski's form pretrial order is attached).

2. Pretrial Conferences

Pretrial conferences are scheduled by Judge Twardowski's Judicial Assistant only at the request of the parties. Ordinarily, the pretrial conference will be conducted by telephone, however, in appropriate circumstances, a pretrial conference can be held in Chambers if the parties make a written request to Judge Twardowski.

3. *Filing of Memoranda and Briefs*

a. *Pre-trial*

Judge Twardowski ordinarily does not require that memoranda of law be filed prior to trial. However, if a party chooses to file a pre-trial memorandum, he must file it in duplicate with the Clerk's Office. The Clerk's Office will retain the original for the official court file and forward the copy to Chambers.

b. *Post-Trial*

Counsel are ordinarily directed by bench order to file memoranda of law following a trial. All memoranda must be filed in duplicate with the Clerk's Office. The Clerk's Office will retain the original for the official court file and forward the copy to Chambers.

c. *Reply and Surreply Memoranda and Briefs*

Judge Twardowski rarely orders the parties to file reply and surreply memoranda of law. If a party desires to file a reply memorandum, he must first submit a written request to Judge Twardowski. Judge Twardowski will not consider any unsolicited reply memorandum filed without prior permission from the Court. If, however, Judge Twardowski permits a party to file a reply memorandum, he will permit the opposing party to file a surreply memorandum.

4. *Mediation*

Judge Twardowski will enter a pretrial order in all adversary cases except those assigned to compulsory arbitration. (A copy of Judge Twardowski's form pre-trial order is attached). The pre-trial order requests that the parties inform Judge Twardowski in writing whether they consent to participate in mediation. If all parties consent, a mediator will be appointed forthwith.

ARBITRATION

1. *General Approach to Arbitration Cases*

Adversary proceedings will be assigned to compulsory arbitration in accordance with Local Bankr. R. 9019-2.

2. *Scheduling of Trial De Novo From Arbitration*

Once a trial *de novo* is demanded, Judge Twardowski will issue a pretrial order which contains a discovery deadline and a deadline for the filing of pretrial statements. (A copy of Judge Twardowski's form pretrial order is attached). When discovery is complete and the pre-trial statements are filed, Judge Twardowski, in conjunction with his Judicial Assistant, will schedule a *de novo* trial. The Court will provide adequate notice to all parties of the trial date. If cause is shown, Judge Twardowski will grant written requests made to his Courtroom Deputy for special consideration in the scheduling of trials *de novo*.

TRIAL PROCEDURE

1. *Scheduling of Cases*

When, pursuant to deadlines set in the pretrial order, discovery is complete and the pretrial statements are filed, Judge Twardowski, in conjunction with his Judicial Assistant, will schedule a trial. (A copy of Judge Twardowski's form pretrial order is attached). The Court will provide adequate notice to all parties of the trial date. If cause is shown, Judge Twardowski will grant written requests made to his Courtroom Deputy for special consideration in the scheduling of trials.

2. *Matters Involving Out-of-Town Parties or Witnesses*

Judge Twardowski will attempt to accommodate out-of-town parties or witnesses when scheduling trials.

3. *Side Bars*

Requests for side-bar conferences will be granted only when necessary.

4. *In Limine Motions*

The pretrial order entered by Judge Twardowski in every adversary case after the answer to the complaint is filed contains a deadline for the filing of *in limine* motions. (A copy of Judge Twardowski's form pretrial order is attached).

5. *Opening Statements and Summations*

Judge Twardowski prefers that opening statements and summations be brief and concise.

6. *Examination of Witnesses Out of Sequence*

Judge Twardowski will permit counsel to examine witnesses out of turn if all parties consent or if required for the legitimate convenience of the witnesses.

7. *Videotaped Testimony*

Judge Twardowski will permit the use of videotaped testimony to the extent agreed upon by all parties or as allowed by the Federal Rules of Bankruptcy Procedure.

INJUNCTIONS

1. *Scheduling and Expedited Discovery*

Motions for temporary restraining orders or for preliminary injunctions must be filed with the Clerk's Office and notice given to opposing parties in compliance with Fed. R. Bankr. P. 7065. Upon filing of the motion, Judge Twardowski's Courtroom Deputy will consult with the Judge to determine the appropriate course of action, including the scheduling of a hearing or telephone conference.

Motions for expedited discovery must be filed with the Clerk's Office and served upon opposing parties. The motion will be determined summarily after opposing parties have had an opportunity to respond.

2. *Proposed Findings of Fact and Conclusions of Law*

Judge Twardowski does not require the filing of proposed findings of fact and conclusions of law when a temporary restraining order or preliminary injunction is sought unless the parties are advised otherwise.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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In re

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Debtor

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Bankruptcy No.

:

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Plaintiff

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v.

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:

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Defendant

:

Adversary No.

.....

PRETRIAL ORDER #1
(See Paragraph H. for date of Mandatory Courtroom Conference)

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AND NOW, this day of , 2002, the Plaintiff(s) having filed an adversary proceeding and the Defendant(s) having filed a responsive pleading thereto, it is hereby ORDERED that:

1. On or before , the parties shall submit to the clerk a Joint Statement indicating whether they would consent to participate in the court-annexed

mediation program. If a party declines to so participate, said party shall state the reason(s) for such declination in the Joint Statement.

2. On or before _____, counsel shall have held and concluded the mandatory discovery conference pursuant to Fed.R.Civ.P. 26(f), which is incorporated into these proceedings by Fed.R.Bankr.P. 7026. During said conference, the parties shall review, as part of their deliberations on how to proceed with discovery, the discovery and pretrial schedule detailed below in paragraph 5 of this Order.

3. Within fourteen (14) days after the conclusion of the Rule 26(f) discovery conference, the parties shall file a discovery plan as mandated by Fed. R. Civ. P. 26(f) only in the event that:

(a) any party proposes a discovery or pretrial schedule that differs from the one outlined in paragraph 5 below, or

(b) any party objects that Rule 26(a)(1) initial disclosures are not appropriate in the circumstances of the action.

In the event of (a) or (b) above, a formal pleading shall be filed pursuant to motion practice under L.B.R. 9014-3.

4. Within fourteen (14) days after the conclusion of the Rule 26(f) discovery conference, the parties shall provide each other with the initial disclosures detailed in Fed.R.Civ.P. 26(a)(1).

5. The following discovery and trial schedule shall be reviewed by the parties in

their deliberations at their Rule 26(f) discovery conference:

- A. All expert witnesses shall be identified and a copy of each expert's report shall be provided to every other party, in accordance with Fed. R.Civ.P. 26(a)(2), on or before .
 - B. All discovery shall be completed on or before .
 - C. All motions to amend the pleadings, or for summary judgment, shall be filed on or before .
 - D. All motions in limine (other than motions objecting to initial disclosures) shall be filed on or before .
 - E. All discovery disclosures pursuant to Fed.R.Civ.P. 26(a)(3) shall be served on opposing parties and filed with the bankruptcy court on or before .
 - F. Any objections to the Rule 26(a)(3) disclosures shall be served on opposing counsel and filed with the bankruptcy court pursuant to motion practice under L.B.R. 9014-3 on or before .
 - G. On or before the parties shall file a Joint Pretrial Statement and file a copy with chambers. The Joint Pretrial Statement shall be signed by all counsel. It is the obligation of the Plaintiff's counsel to initiate the preparation of the Joint Pretrial Statement and to assemble and file the Joint Pretrial Statement. Plaintiff's counsel shall submit a proposed Joint Pretrial Statement to Defendant's counsel not less than 7 days prior to the deadline for its submission. If any party violates any of these provisions, the court shall consider imposition of sanctions on the offending party(ies) and/or their counsel.
- The Joint Pretrial Statement shall set forth all of the issues on which the parties agree and disagree and shall contain the following:
- I. Basis of jurisdiction. (including a statement whether this matter is core or non-core). If the matter is non-core, the parties shall state

whether they consent to the court's entry of a final order pursuant to 28 U.S.C. § 157(c)(2). If the parties disagree, they shall each cite relevant authority to support their positions.

- II. Statement of uncontested facts.
- III. Statements of facts which are in dispute. No facts should be disputed unless opposing counsel expects to present contrary evidence on the point at trial or genuinely challenges the fact on credibility grounds.
- IV. Damages or other relief. A statement of damages claimed or relief sought. A party seeking damages shall list each item claimed under a separate descriptive heading, shall provide a detailed description of each item and shall state the amount of damages claimed. A party seeking relief other than damages shall list the exact form of relief sought with precise designations of persons, parties, places and things expected to be included in any order providing relief.
- V. Legal issues presented and the constitutional, statutory, regulatory and decisional authorities relied upon. Counsel shall include a brief statement regarding which party has the burden of proof on each legal issue.
- VI. Witnesses listed in the order they will be called along with a brief statement of the evidence the witness will give. Witnesses shall be classified to include those who any party expects to present and those whom any party may call if the need arises. If not already provided to all parties, the address and telephone number of each witness shall be disclosed.
- VII. Exhibits listed in the order they will to be offered into evidence. Exhibits shall be serially numbered and physically marked before trial in the order of their intended presentation. Documents which a party may offer if the need arises shall be separately identified.
- VIII. A list of each discovery item and trial deposition to be offered into evidence. Counsel shall designate by page the portion of deposition testimony and by number the interrogatories which

shall be offered in evidence at trial.

IX. Estimated trial time.

X. A certification that the parties have attempted good faith settlement discussions without success.

H. A mandatory final pretrial/settlement conference shall be held on
**at A.M. in Bankruptcy Courtroom #1,
Third Floor, The Madison, 400 Washington Street, Reading, PA.**

I. If the adversary proceeding is not resolved prior to the conclusion of the conference, the court shall enter an Order Setting Adversary Trial Date and serve a copy of same on each party at said conference.

THOMAS M. TWARDOWSKI
United States Bankruptcy Judge